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**LLOYD G. FARR**  
**NELSON MULLINS RILEY & SCARBOROUGH LLP**  
**P O BOX 11070**  
**COLUMBIA SC 29211**

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**OFFICE OF PETITIONS**

In re Application of :  
Robert O. Huff et al :  
Application No. 09/954,829 : DECISION ON PETITION  
Filed: September 12, 2001 : UNDER 37 CFR 1.78(a)(3)  
Attorney Docket No. 03752/09148CON5 :  
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This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 2, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;<sup>1</sup>

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<sup>1</sup> Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or

- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on September 12, 2001, and was pending at the time of filing of the instant petition. Further, copendency exists between the instant application and between each of the prior-filed nonprovisional applications noted in the amendment, for which a claim for benefit of priority is now being sought. A reference to each of the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(3).<sup>2</sup>

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2). Also, the reference to the prior-filed applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted as of the date of filing the petition.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

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international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

<sup>2</sup> The amendment contains typographical errors in two of the application numbers; namely, "08/704,148" should read -- 08/704,418 -- and "07/449,772" should read -- 07/449,722 --. These corrections have been noted in the amendment.

This application is being forwarded to Technology Center Art Unit 3722 for appropriate action on the response to the Office action of December 28, 2001 and for processing and consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(3) for the benefit of priority to the prior-filed applications.



Frances Hicks  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt